

Memorandum

**TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT
COMMITTEE**

**FROM: Deanna J. Santana
Robert L. Davis**

**SUBJECT: FOLLOW UP REPORT ON AUDIT
OF CARDROOM LICENSES
AND WORK PERMITS**

DATE: May 14, 2010

Approved

Date

5/17/10

RECOMMENDATION

- (a) Accept the proposal to resolve the existing backlog of Cardroom License applicants;
- (b) Issue a Manager's Budget Addendum (MBA) to amend the Fee Schedule Cardroom Work Permit Fee and Cardroom Table Fee to appropriately charge the cost recovery fees, as a result of moving the Cardroom Work Permit function from the Police Department's Permits Unit to the Division of Gaming Control (DGC); and
- (c) Report on the proposed streamlined licensing process in fall 2010.

OUTCOME & BACKGROUND

This report provides a response to questions raised at the April 15, 2010 Public Safety, Finance & Strategic Support Committee (Committee). On April 15, 2010, the City Auditor presented an "Audit of the City's Licensing and Permitting of Cardroom Owners and Employees (Audit)," and the Administration presented its response to the Audit. The Committee posed questions and motioned to have the item return to the May 20, 2010 Committee meeting with the following information:

- (1) Description of the scope of the backgrounding, purpose for the scope, and a contrast of that scope to the State's backgrounding.
- (2) Explanation of how the DGC will address the backlog and ensure that those that have applied and those that have a temporary permit or license are fully licensed.
- (3) Information on what it will take to move the Cardroom Work Permit function from the Police Department's Permits Unit to the DGC to improve the processing of work permits.

Staff has included information on viable options for moving forward with licensing that require continued discussion with the State to determine which works best to uphold Title 16, Gaming Control Ordinance, and the logistics to operationalize this new process. Staff is in discussions with Mr. Marty Horan, Assistant Chief of the Department of Justice (DOJ) and Mr. Norm Pierce, Assistant Chief of the Bureau of Gambling Control (BGC) to implement the various tasks outlined in this report and has solicited their professional input to inform our local license investigation efforts.

PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 2

ANALYSIS

This section of the report provides information on: (1) Comparison of State vs. City License Application Process and Investigative Procedure, (2) Resolving the Existing Gaming License Backlog, (3) Viable Options for Future Licensing, and (4) Moving the Cardroom Work Permits function to the DGC.

(1) Comparison of State vs. City License Process/Investigative Procedure

Investigative Procedures: The Committee requested that the DGC describe the difference between the State and City license investigative procedures. State representatives confirmed, once again, that it is not amenable to the City sharing publicly its investigative procedures and information about particular applicants, but will share its investigative procedures and information in great detail with law enforcement agencies, such as the San Jose Police Department (SJPd). For the purpose of developing a response for the PSFSS Committee, City staff pursued conversation on whether agreement could be reached in terms of how to characterize the investigative procedures to share publicly with the PSFSS Committee and the State representatives maintained their expressed position; however, there was complete agreement to share immediately investigative procedures and investigative records about San Jose applicants (e.g., "working papers") with the SJPd. The SJPd shares the same position with the State, as a release of this information would compromise the investigative procedures used for backgrounding. The State did, however, share a compilation of key documents for the City to understand better the State's investigative procedures checklist and agreed to provide the SJPd access to its investigative records and/or documents ("working papers").

It should also be noted that the State representatives acknowledged that its licensing process is guided and informed by the Gambling Control Act's criteria for licensing as well as the State Commission of Gambling, which is the body that has final decision-making authority on the Bureau's licensing recommendations. The Gambling Control Act and Title 16 have substantially identical statutory criteria for licensing. The discussion concerned license investigation procedures and the sharing of investigative resources, files, and methodologies. The discussions were very productive, with State representatives expressing an interest in working with the SJPd. Further discussions and meetings will be pursued in order to develop more detailed a work plan and requires more time on both sides to draw conclusions on how to reach the mutual interest of shared investigative resources, files, methodologies, etc.

Application Form Review: In the absence of the above investigative procedure comparison, to provide the PSFSS Committee with some level of information, the DGC completed a surface review of two State Gaming application forms (CGCC-030 and CGCC-031) and the related supplemental background investigation information (BGC-APP-015A and BGC-APP-016A) which are required by the California Gambling Control Commission for anyone filing for licensure as gambling establishment owners¹ and key employees² in California. Staff also

¹Title 16, section 16.02.460, an "Owner" means every person who owns an interest in any Cardroom or Cardroom Permittee.

² Title 16, section 16.02.420, a "Key Employee" means any person employed in the operation of a Cardroom in a supervisory capacity who is authorized or empowered to make discretionary decisions with regard to Gambling

PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 3

compared the procedures and requirements of these forms to the application for a Cardroom Gaming License required by the City. In summary, both the City and the State require information for the past ten (10) years for most categories and on many categories do not specify a time requirement for information. In terms of financial background information, the City requires 10 years which is different than that of the State's requirements³. By comparison of applications, it appears that the focus of the investigative process of both State and City is very similar in terms of the categories of information requested, however, based on the application review, the City requests more detailed disclosure of information which will be evaluated against key elements specific to upholding Title 16 regulatory principles. The City also has one application for both owner and key employees. The State has two applications, one for owner and one for key employee applicants. Both agencies request information concerning the following general categories in the applications:

- | | |
|------------------------|---|
| ▪ Personal Information | ▪ Experience and Employment |
| ▪ Citizenship | ▪ Business Interests |
| ▪ Residence | ▪ Convictions, Litigation and Arbitration |
| ▪ Marital and Family | ▪ Licensing |
| ▪ Military | ▪ Personal Financial Information |

Categories required by the City's gaming application but are not required by the State are:

- | | |
|------------------------|--------------------------|
| ▪ Education | ▪ Vehicle Operation Data |
| ▪ Character References | |

(2) Resolving the Existing Gaming License Backlog

The Committee asked staff to provide detail and a proposal on how the DGC could resolve the backlog and ensure that those individuals holding a temporary license receive a clear decision on whether the application is approved or denied.

State representatives agreed that the City should focus its efforts on the backlog first in order to allow for both the City and the State to develop a process for concurrent review of future applicants. The State reviewed the proposed backlog framework and concurred with the proposed approach/criteria. The State suggested that the City evaluate the investigative "working papers" of applicants that have received State Licenses to understand areas of "questionable conduct" to

operations, including, without limitation, shift managers, credit executives, cashier operations supervisors, Gambling operation managers and assistants, managers or supervisors of security personnel, surveillance managers or supervisors, or any other person designated as a Key Employee by the Administrator because the Administrator believes the person has the power to exercise a significant influence over the gaming operation of the Cardroom Permittee or for other reasons consistent with the public interest, and the policies of this Title.

³ For example, under the State's "Supporting Documentation Checklist" with respect to the Key Employee Application, the State requests Federal individual and business tax returns for the past three years; monthly bank statements for all personal and business accounts; and monthly/quarterly investments statements for all personal and business accounts for the last 12 months. Under the State's "Supporting Documentation Checklist with respect to the Gambling Establishment Owner Applicant – Individual Supplemental Background Investigation Information, the State requests signed and dated copies of state and federal tax returns for the past three years; Bank statements (personal and business) and investment account statements (personal and business) that correspond to the same period of time reflected in the balance sheet and income statement.

PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 4

better inform this framework since there may be issues of timing between when the State completed its investigation, for which State Licensure was based, and any current conduct issues of any given applicant. This concern is offset by the City's proposed requirement to work with a City Temporary License for three years to allow adequate time to observe an applicant's adherence to State and City regulatory requirements.

Licenses are issued to cardroom stockowners and key employees.⁴ For the purpose of this framework, the backlog is defined as those "license applicants that fall outside of the 180 day benchmark noted in Title 16 and have State Licenses (or are exempted)." The City should only issue regular licenses to individuals that hold a State License, or are exempted from State licensure, but require a City's Regular License per Title 16. Based on the above backlog definition, coupled with the recent completion of some license applications, the DGC's existing backlog is 35.⁵

Diagram 1 explains the framework for resolving the backlog. Criteria 1 requires a State License (as noted, the State recommended review of its investigative "working papers" first). Criteria 2 couples the State License with the City's preliminary investigative work and three years of on-the-job observation with a City Temporary License (which can overlap with the State License process) that gives the City a compliance history for adherence to Title 16 regulatory requirements, and whether or not the person is likely to comply with State and City regulations in the future. The three year timeframe was also reviewed with the State representatives and their professional advice was that the duration was adequate. Criteria 3 requires that no Major Violations, per Title 16, are committed prior to receiving a Regular City License. It should be noted that if the applicant commits a minor violation it does not affect the decision to recommend issuance of a regular license. As a note, per Title 16, conduct, action, or failure to act by a Cardroom Permittee, Licensee or Employee may be treated as a Minor Violation if the Administrator determines that:

1. The conduct, act, or failure to act was not of a nature, quality, or extent that it affected the integrity of any Controlled Game conducted on the Cardroom Premises;
2. The conduct, act, or failure to act was not willful or intentional; or
3. The conduct, act, or failure to act was not part of a continuing pattern or practice of the Cardroom Permittee or Licensee.

⁴ A key employee is an individual who is authorized or empowered to make discretionary decisions and has a significant influence over the gaming operation of the Cardroom.

⁵ It should be noted that three (3) individuals applied within 180 days, and are not considered part of the backlog, and one (1) individual that applied more than 180 days ago has abandoned his state key employee application and are not considered in the backlog.

PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 5

Diagram 1: Framework for Resolving Backlog

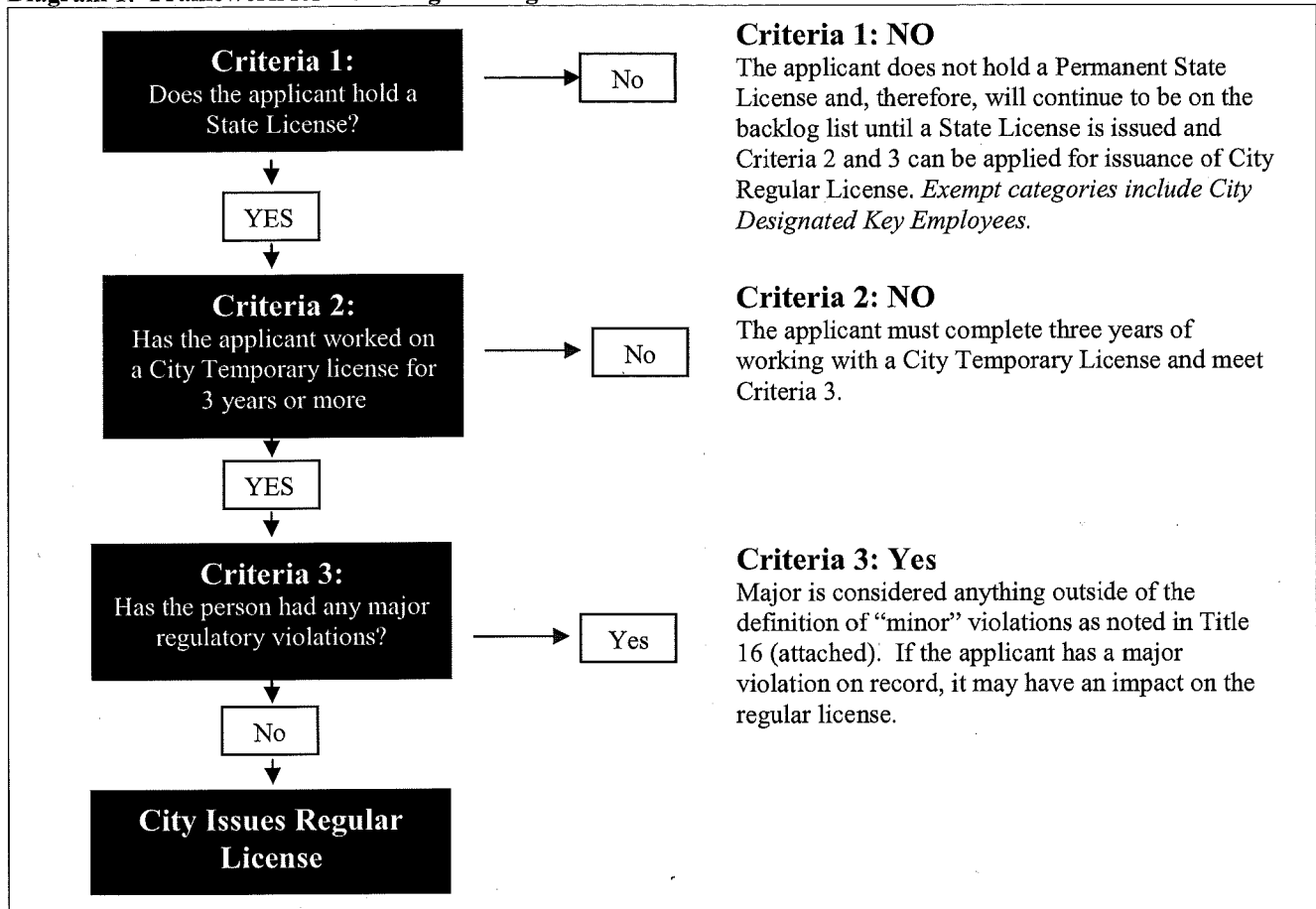


Table 1 illustrates the number and categories when this framework is applied. Table 1 shows that 16 applicants will receive the City’s Regular License and one applicant will be subject to further investigation (potential denial); thus, accounting for resolution of 49% of the backlog upon City Council approval of this process. The City is awaiting information for 5 applicants from the DOJ regarding their State License status (14%) and two applicants have not reached Criteria 1 (6%).

Table 1: Status of Applicants (Existing Backlog)

Type of Applicant	Total # of Applicants	% of Backlog
Criteria 1 – 3 Reached [Issue City’s Regular Licenses]	16	46%
Criteria 1 – 2 Reached [Further Investigation needed/Potential Denial]	1	3%
Criteria 1 Reached [Work with Temporary City License for 3 years and/or Completed Investigation (Whichever completed first)]	11	31%
No Criteria Reached [Need to Obtain State License]	2	6%
To Be Determined [State License Status Unknown (Information Pending from DOJ) [Criteria 1 TBD, but have not achieved Criteria 2]	5	14%
TOTAL	35	100%

PSFSS COMMITTEE**RE:** Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 6

There are 18 applicants that need to complete Criteria 1 and/or 2 (see Table 1, Rows: Criteria 1 Reached, Not Criteria Reached, and To Be Determined) without committing a Major Violation per Title 16 (Criteria 3). Assuming that all 18 achieve Criteria 1 -3, here is a breakdown of the months required to receive a City's Regular License. Within one year, 10 applicants would be eligible for a City's Regular License, resulting in a resolution for approximately 80% of the applicants. Under this framework, eight individuals would need to wait beyond a year.

Table 2: Duration to Achieve Criteria 2

Duration to Achieve Criteria 2 (Months)	Number of Applicants
0 – 6	6
7 – 12	4
12+	8

This framework will be used until the City and State can complete development of a working framework for sharing investigative work and resources. If the City Council approves the above framework, staff will put in place a notification process to inform the applicants of the status of their application within this framework, along with the time frame for eligibility for a regular license.

(3) Preliminary Options for Future Licensing

During discussion with representatives from the DOJ and Bureau of Gambling Control, various options were shared and discussed. The State representatives acknowledged that any of the options outlined in Diagram 2, including application of a combination of the options, related to sharing of information would work and that the State would benefit from receiving information from the SJPd given the City's quality of background investigative work.

Given that the State already has a mechanism in place to share all information with other local law enforcement agencies, only the development of a City Confidentiality Release Form for applicants would be needed in order to share City application information with the State. Staff will begin to work on developing such a form in collaboration with the State.

The State representatives expressed concern about the "timing" of application review and ensuring that applicant information is current enough for both agencies drawing investigative conclusions. These are details that require further discussion and evaluation by both the State and City. Given the multiple ideas that developed during the conversation, it became clearer that the City could employ a combination of the below options to ensure further streamlining of application review. Thus, having a set of investigative methodologies to apply will further address issue of time-cycle completion

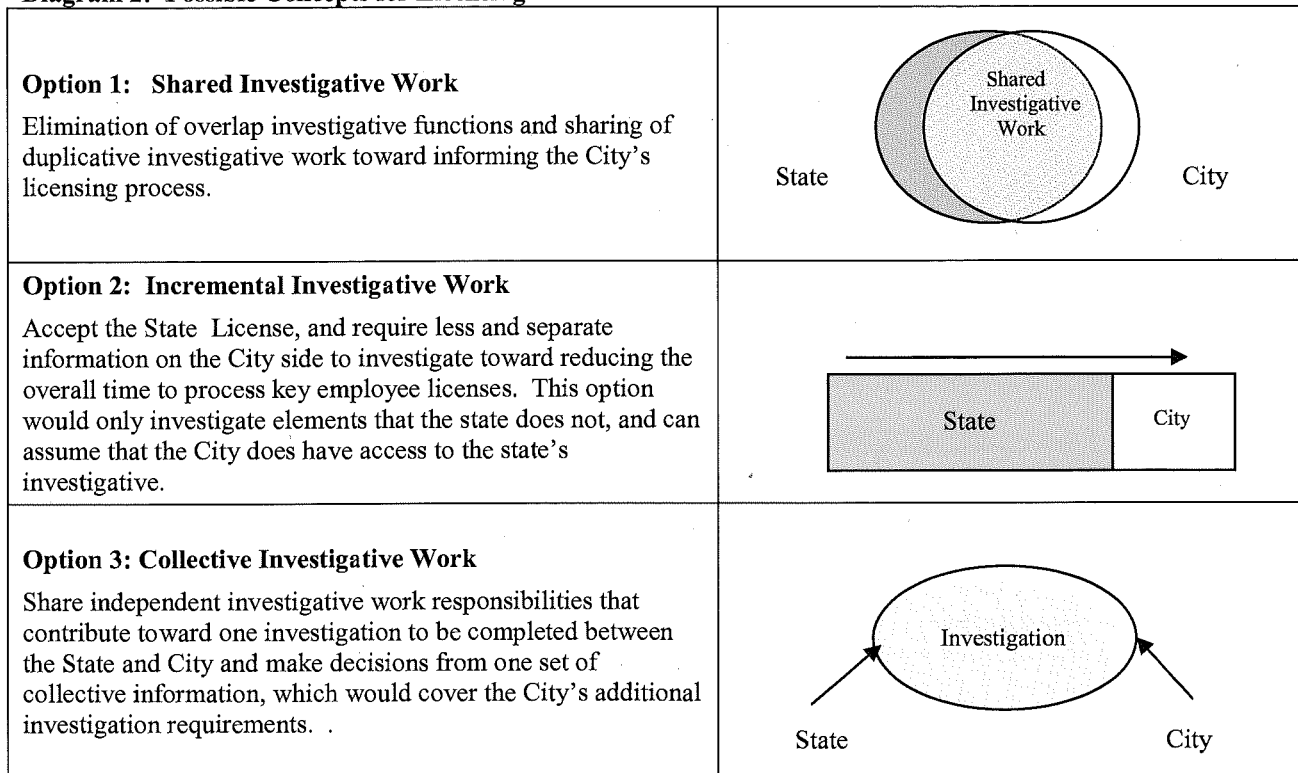
PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 7

Diagram 2: Possible Concepts for Licensing



Request for Qualifications (RFQ) and Schedule: The City has issued a RFQ for a Gaming Regulation consultant to better inform the future of the DGC structure. The purpose of the consultant would be to focus on efficiency measures, as well as providing insight and recommendations on regulatory and law enforcement practices and procedures based on the recently issued reports and audits. The consultant would also assist with the review of the above options and provide insight for the best approach based on the City's regulatory program (Title 16). Staff intends on selecting a consultant based on the RFQ by late May/early June and have the consultant begin immediately with review and analysis during June-August. Staff will plan on bringing a report to the Committee on the result of the findings and recommendations in the September/October timeframe, workload permitting and with continued meetings with the State to reach agreement.

(4) Moving the Cardroom Work Permits Function to the DGC

The permitting for Work Permits is currently processed through the Police Department's Permits Unit, which handles various permitting functions (e.g., massage parlors, flower vendors, taxis, press passes and media production permits, bingo, etc.). The DGC has the equipment to process work permits onsite and was successful with clearing up the Work Permits backlog last year. The entire work permit application review, fingerprint (Live-Scan), analysis, and work badge issuance process for gaming Work Permits can be shifted over to the DGC effective July 1, 2010 and staff is prepared to issue a MBA to be considered by June 15 by the City Council as part of the budget approval process. In order to implement this approach, the City would segregate the regulatory functions from the permitting function so that fees reflect the cost for service for each function and are "cost recovery"; thus, requiring an MBA to amend the City's Proposed 2010-2011 Fee

PSFSS COMMITTEE

RE: Follow-up Report on Audit of Cardroom Licenses and Work Permits

May 14, 2010

Page 8

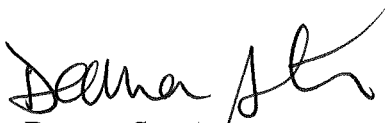
Schedule regarding fees for the Cardroom Work Permit and Cardroom Table Fee. Some key information about the impact of this action:

- This service delivery approach would result in a decrease in the Cardroom Table Fees for gaming businesses from the FY 2010-1011 proposed fee of \$26,535 to \$24,651 per table;
- This proposal reduces the number of staff allocated to regulatory functions from 7 to 6.25 FTE; and,
- Increases the work permit fees from \$361 plus fingerprinting costs to \$379 plus fingerprinting costs.

It is important to note that the above proposed Cardroom Table Fees are based on 80 tables; if the Cardroom Ballot Measure passes, the Cardroom Table Fee would be adjusted at the appropriate time. The State's work permit fees are \$250 and the local costs of Work Permits are based on labor and overhead calculations which contribute to the higher San Jose work permit fee.

COORDINATION

Concepts and a draft report were shared with the State Department of Justice and State Bureau of Gaming Control. Completion of this report was coordinated with the City Attorney's Office.



Deanna Santana
Deputy City Manager



Robert Davis
Chief of Police

ATTACHMENT A
CHAPTER 16.33, MINOR VIOLATIONS
16.33.010 Notice of Minor Violation; Imposition of Monetary Fines

- A. Conduct, action, or failure to act by a Cardroom Permittee, Licensee or Employee may be treated as an Minor Violation if the Administrator determines that:
1. The conduct, act, or failure to act was not of a nature, quality, or extent that it affected the integrity of any Controlled Game conducted on the Cardroom Premises;
 2. The conduct, act, or failure to act was not willful or intentional; or
 3. The conduct, act, or failure to act was not part of a continuing pattern or practice of the Cardroom Permittee or Licensee.
- B. For each Minor Violation, the Administrator may assess a monetary penalty against the Cardroom Permittee in an amount up to, but not to exceed, two thousand dollars (\$2,000) per incident.
- C. The aggregate of all monetary penalties assessed pursuant to sub-part B, above, shall not exceed one hundred thousand dollars (\$100,000) per calendar year with respect to any one Cardroom Permittee.
- D. A decision of the Administrator to impose a monetary penalty under this Section shall be final upon written notice to the Cardroom Permittee, and shall not be subject to challenge, appeal, or review save and except, and only to the extent that the decision is arbitrary or capricious.
- E. If the Administrator finds that a Minor Violation has occurred, and imposes monetary penalties under this Section, the facts and circumstances constituting the Minor Violation shall not be the subject of any other Regulatory Action, nor shall they be used or considered in connection with any future Regulatory Action, or enforcement proceedings against the Cardroom Permittee. A Minor Violation shall not constitute a violation of the terms of any permit or License held or enjoyed by a Cardroom Permittee and/or Licensee.
- F. If the Cardroom Permittee contends that the imposition of the Minor Violation is arbitrary or capricious or lacking in substantial evidentiary support, the Cardroom Permittee shall file written request for hearing to the Administrator within ten (10) calendar days of the Notice of Minor Violation. Upon a timely request for hearing, the Chief of Police shall designate a Hearing Officer, who will set a hearing for such determination. The Minor Violation shall be upheld if the Hearing Officer determines that the imposition of the Minor Violation was not arbitrary or capricious or lacking in substantial evidentiary support. The Notice of Minor Violation and any additional report submitted by the Administrator shall constitute prima facie evidence of the respective facts contained in those documents. The Cardroom Permittee shall have the burden of proving its challenge. The hearing will be informal, with the Cardroom Permittee and the City having the opportunity to present evidence, documents and testimony regarding the Minor Violation. The hearing will be scheduled in a reasonable time period after written notice of request for hearing is filed with the Administrator. The written decision of the hearing officer shall be served upon the Cardroom Permittee within a reasonable period of time after the close of the hearing. The written decision of the hearing officer will be final and shall contain a notice setting out Section 1.16.010 of this Code.